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TAGS: [PREL](#) [PGOV](#) [KJUS](#) [KDEM](#) [KCRM](#) [SNAR](#) [HA](#)
SUBJECT: STATUS OF JUSTICE REFORM

REF: A. 06 PORT AU PRINCE 2453
[1](#)B. PORT AU PRINCE 23

PORT AU PR 00000370 001.2 OF 004

[1](#)1. (U) This message is sensitive but unclassified -- please protect accordingly.

[1](#)2. (SBU) Summary: The justice sector in Haiti is in dire need of reform. Despite ongoing efforts by the international community, no single part of the apparatus functions properly, from arrest to trial. Having consulted international donors, Justice Minister Magloire is set to present new legislation to parliament to establish a judicial council to oversee the judiciary, define the role of magistrates ("magistrates" refers to investigators and district court judges), and re-open the school of magistrates. The judicial council would include a Judicial Inspection Unit (JIU) to conduct vetting ("certification") of the magistrates. Minister Magloire has also drafted an action plan that includes the establishment of specialized courts to handle cases of organized crime and gang-related violence. Among the most pressing needs for the justice system, experts identify better pay for the magistrates, additional penitentiaries, record keeping, refurbishment of courthouses, and increased mid-level capacity at the justice ministry to ensure continuity. Haiti's provinces especially suffer from a lack of capacity in the justice system. The draft laws and the justice minister's action plan are the GoH's first official attempts to implement justice reform. Many Haitian and international justice specialists wonder, however, whether the GoH and the justice minister specifically have the capacity and political will to implement lasting reforms. End Summary.

Three New Laws for Parliament

[1](#)3. (SBU) Justice Minister Magloire drafted three new laws on justice reform which the executive will present to parliament as part of its "legislative menu" now that Carnival is over. The most ambitious of the three would establish a judicial council to oversee the magistrates, as well as protect their job security. The council would comprise four members of the supreme court and three members of the civil society, appointed by various elements of the judicial system. The

interim government under former Justice Minister Henri Dorleans had issued a decree creating a judicial council, but Minister Magloire abolished the decree because it transferred authority for many administrative and financial powers from the ministry to the courts. According to Philippe Lamarche, country director of the National Council of State Courts (NCSC -- USAID's implementing partner for judicial reform), Minister Magloire opposes the truly independent judiciary called for in Haiti's 1987 constitution (known here as the Latin American system) because of his experience in Canada, where many judicial powers remain within the ministry.

14. (SBU) MINUSTAH justice section officer Jean Luc Marx told Poloff that the budget was a particular point of contention during the drafting of this law. Following a round-table discussion with international experts in September 2006, the Minister opted to give each of the five district appeals courts responsibility for financial management, but retained oversight by the finance ministry (effectively maintaining executive oversight of the judicial branch). According to former magistrate and justice program manager at USAID, Gerard Fontain, this law might not pass if members of parliament solicit input from the civil society, who oppose the law because it does not create a truly independent judiciary. MINUSTAH officers stressed the importance of passing this law in conjunction with the other two, and said that despite its flaws, this law would help move justice reform forward.

15. (SBU) The judicial council would oversee the Judicial Inspection Unit (JIU), charged with "certification," (UN parlance for vetting), of the magistrates. MINUSTAH's justice section director, Denis Racicot, told Poloff that in 1994 when the international community first attempted justice reform, sitting magistrates protested the efforts as soon as reform changes (i.e. opening the school and replacing the

PORT AU PR 00000370 002.2 OF 004

most-corrupt magistrates) started to take place. In order to avoid a similar backlash, the new law proposes a "holistic approach" including evaluation of the magistrates' professional lives, collection of information on allegations of corruption, and job security for certified magistrates. The justice minister has expressed his support for certification, but told MINUSTAH officers that he does not have the backing of his staff.

16. (SBU) The other two laws define the qualifications and requirements for magistrates and the re-opening of a public school for their training. Lamarche pointed out that the school (known by its French acronym, EMA) has not operated since 2003, but that NCSC and others have held workshops for magistrates under the school's name. Though these two laws are less controversial than the law establishing the judicial council, critics in the Haitian legal community complain that the drafts reflect too much foreign influence. NCSC and other organizations have held working-group sessions with members of parliament to explain and encourage backing of all three complimentary laws.

The Minister's Action Plan
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17. (SBU) After abolishing the interim government's judicial decree, Minister Magloire presented his action plan for justice reform to the GoH. The action plan proposes to divide the West Department into smaller divisions to eliminate the bottlenecked caseload in Port-au-Prince. (Like most institutions, the justice system has not adjusted to the population growth in Port-au-Prince over the past decade.) The minister's plan would increase the number of justices of the peace country-wide and set up an ad-hoc working group to discuss the budget and administration of the new justice system. The plan calls for pre-trial detention committees to limit delays for suspects awaiting trials, emphasizes training, and would establish specialized magistrates and

prosecutors who work alongside specialized units of police officers for crimes like kidnapping and organized crime. MINUSTAH officials Marx and Racicot pointed out that the action plan is a good start and that the government needs to institute immediate reforms. In a separate meeting, Fontain said the action plan is very ambitious and that with the justice ministry's minuscule budget -- and no mid-level employees at the ministry to ensure continuity of the plan should the minister be replaced -- few of the reforms will be realized.

New Ideas: Specialized vs. Transnational Court

18. (U) Justice sector contributors have heralded the idea of specialized courts to deal with Haiti's most pressing and serious crimes such as organized crime, corruption, drug dealing, kidnapping, and gang-related violence and rape. One current judge told Fontain that the conflict over the future of one of Haiti's failed banks, Socabank (to be reported septel), could never be disputed in court because of a lack of expertise amongst Haiti's judges. Reportedly, the idea has support from civil society and Haiti's top judges and prosecutors, but at this point the idea is in its nascent stages, and far from becoming a reality.

19. (SBU) The Haitian press has reported on the concept of a hybrid, transnational court made up of Haitian and international elements, as proposed in the latest report by the International Crisis Group (ICG). Lamarche pointed out to Poloff that although the idea was relatively well-received by both the president of the judges association and the head of the supreme court in Haiti, a hybrid court would be a tough sell to other elements of Haitian society. Additionally, this hybrid court would require millions of dollars in investigations, equipment, operational fees, security and salaries that the international community is not spending currently on the Haitian judicial system. One Haitian judge pointed out that if this funding and equipment were available to the local justice system, it might be capable of functioning like the proposed hybrid court. Some have questioned whether this court would also entail an

PORT AU PR 00000370 003.2 OF 004

international police force as well to make the arrests and participate in the investigations.

Better Pay, More Jail Cells and other Immediate Needs

10. (SBU) The immediate needs of Haiti's judicial system are overwhelming; however there are several themes local and international players emphasize. The first is better pay and benefits for the magistrates. Largely due to low salaries and late paychecks, corruption is pervasive; magistrates are known universally for accepting bribes and retaining fees levied on the offenders. Court houses are not well-equipped and the magistrates do not have access to files, books or a law library. Fontain described the conditions at the district attorney's office in Port-au-Prince as utterly inadequate: overcrowded offices with no supplies or computers, where magistrates alternate shifts for lack of space, leading to prolonged detention time for detainees. Some observers commented that the magistrates needed more access to materials and supplies during trial; NCSC's Lamarche opined that since only three percent (a very low percentage) of arrests end in trial, the process by which offenders are brought to trial is more pressing at this moment than materials used in trial.

11. (SBU) Racicot said that the justice system needs to start recording cases, perhaps linked to the national identity card, in order to move forward. Many of the offenders are in and out of prison on a regular basis either because they pay bribes or because their cases are dropped. Information on repeat offenders would strengthen the system.

Also, the investigative capacity of the justice system is limited. Racicot told Poloff that as of 2007, the only case of forensic science being used to investigate a crime in Haiti occurred in the mid 1990s when robbers shot and killed local employees of the U.S. embassy while trying to steal cash being transported from the bank. Separately, Lamarche outlined the dismal conditions of Haiti's prisons. Fontain described a prison in Saint Marc, which was built by the French during the 18th century, and which is currently at double capacity.

Provinces Have it Worst

¶12. (SBU) There are approximately 185 justices of the peace in Haiti, most of which are the first and only responders to arrests made in the provinces. They operate independently of the justice sector because of lack of communication between the justices of the peace and higher courts within the jurisdictions. By empowering (through training, better pay and equipment, and communication) the justices of the peace, the justice ministry could effectively extend its reform across Haiti. However, many of the judges and magistrates in the provinces are political appointees who are not qualified for their jobs. NCSC's project director Peggy Ochandarena inspected court houses in Port-au-Prince and outlying areas and said that substandard working conditions are particularly evident in Haiti's countryside. In many cases court houses are in total disrepair, lacking supplies, books, and files, not to mention computers and electricity. Overall, Fontain said that the justice system is inaccessible to those living in Haiti's countryside.

Comment

¶13. (SBU) With international efforts, led by the USG to reinforce and reform the Haitian National Police (HNP) beginning to show marked results, it is becoming increasingly apparent that the continuing non-performance of the justice system threatens the progress we have made in restoring public security on the streets. MINUSTAH and the GoH are re-focusing on justice reform, and we now have an opportunity to underscore our own support for the justice reform effort. The litmus test for the GoH's efforts will be their commitment to the vetting of magistrates, which will be the most contentious issue within the minister's legislative package. The Ambassador will shortly meet with the justice

PORT AU PR 00000370 004.2 OF 004

minister to get a direct sense of how much fire the minister has in his belly to carry through his proposals.
SANDERSON